

Message Text

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DODE-00 EB-07 FRB-03 H-01 INR-07 INT-05 L-02 LAB-04

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TO AMEMBASSY BANGKOK

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SUBJECT: COUNTRY ELIGIBILITY FOR GENERALIZED PREFERENCES
(GSP) UNDER SECS 502 (B) (4) AND (6) OF TITLE V
OF THE TRADE ACT OF 1974

REF: (A) STATE 282968; (B) STATE 282967

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1. AS REPORTED REF B, BEFORE GSP CAN BE IMPLEMENTED UNDER

THE TRADE ACT OF 1974, THE INTERNATIONAL TRADE COMMISSION (ITC) MUST INVESTIGATE THE DOMESTIC ECONOMIC EFFECT OF PREFERENTIAL DUTY-FREE TARIFF TREATMENT ON IMPORTS OF THOSE ARTICLES PROPOSED FOR SUCH TREATMENT FROM COUNTRIES DESIGNATED IN AN EXECUTIVE ORDER AS BENEFICIARY DEVELOPING COUNTRIES. THIS MESSAGE DISCUSSES COUNTRY ELIGIBILITY UNDER THE NATIONALIZATION AND ARBITRATION PROVISIONS OF THE ACT.

2. SEC. 502 (B) (4) OF TITLE V OF THE ACT PROHIBITS THE PRESIDENT FROM DESIGNATING AS ELIGIBLE FOR GSP ANY COUNTRY WHICH HAS NATIONALIZED THE PROPERTY OF U.S. CITIZENS (INCLUDING CORPORATIONS, PARTNERSHIPS OR ASSOCIATIONS 50 PERCENT OR MORE BENEFICIALLY OWNED BY U.S. CITIZENS), OR TAKEN OTHER ACTIONS WITH SIMILAR EFFECT, UNLESS HE DETER-

MINES THAT FAIR COMPENSATION IS BEING PAID, THAT SUCH

COUNTRY IS "OTHERWISE TAKING STEPS TO DISCHARGE ITS OBLIGATIONS UNDER INTERNATIONAL LAW," OR THAT THE PARTIES HAVE SUBMITTED THE DISPUTE TO ARBITRATION. SEC. 502 (B) (6) APPLIES A SIMILAR PROHIBITION TO ANY COUNTRY WHICH FAILS TO ACT IN GOOD FAITH TO RECOGNIZE AS BINDING OR TO ENFORCE AN ARBITRAL AWARD IN FAVOR OF U.S. CITIZENS (AGAIN INCLUDING CORPORATIONS, PARTNERSHIPS OR ASSOCIATIONS 50 PERCENT OR MORE BENEFICIALLY OWNED BY U.S. CITIZENS). FYI. UNLIKE THE HICKENLOOPER AMENDMENT (SEC 620 (E) OF THE FOREIGN ASSISTANCE ACT), SEC 502 (B) (4) (D) REQUIRES A PRESIDENTIAL DETERMINATION TO BE MADE AND FURNISHED TO CONGRESS REGARDING THE APPLICATION OF THAT SUBSECTION TO ALL UNRESOLVED DISPUTES. THIS NEW REQUIREMENT REINFORCES THE NEED FOR THE USG TO MONITOR AND TO ASSIST IN RESOLVING OUTSTANDING DISPUTES INVOLVING U.S. PROPERTY. END FYI.

3. IT WOULD BE HIGHLY DESIRABLE FOR THE ITC TO UNDERTAKE ITS PRODUCT REVIEW WITH RESPECT TO THE BROADEST POSSIBLE LIST OF POTENTIAL BENEFICIARIES, AND FOR THE COMMISSION TO BEGIN ITS WORK AS SOON AS POSSIBLE. HE WOULD PREFER TO CONDUCT A DETAILED INVESTIGATION OF CASES WHICH MIGHT

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AFFECT HOST COUNTRY ELIGIBILITY UNDER SECS. 502 (B) (4) AND (6) WHILE THE ITC STUDY IS IN PROGRESS. FOLLOWING DISCUSSIONS WITH CONGRESSIONAL STAFFS, HOWEVER, IT IS NOT CLEAR THAT THE INTERIM WAIVER MENTIONED PARA. 4 REF. B WILL BE USED. SEVERAL ALTERNATIVE METHODS OF ACCOMPLISHING OUR OBJECTIVE ARE ALSO UNDER CONSIDERATION, BUT IT IS POSSIBLE THAT DETERMINATIONS OF COUNTRY ELIGIBILITY MAY HAVE TO BE MADE BEFORE THE ITC CAN BEGIN ITS PRODUCT

ANALYSIS.

4. ALTHOUGH WE ARE UNAWARE OF ANY OUTSTANDING OR PENDING CASES WHICH MIGHT AFFECT THAILAND'S ELIGIBILITY UNDER SECTIONS 502 (B) (4) AND (6), RECENT AGITATION AGAINST THE TEMCO CONCESSION COULD HAVE THE POTENTIALITY TO LEAD TO SUCH A PROBLEM. EMBASSY SHOULD MONITOR AND REPORT DEVELOPMENTS IN THIS, OR ANY OTHER CASE, WHICH MIGHT RESULT IN QUESTIONS OF ELIGIBILITY UNDER THESE SECTIONS AT SOME FUTURE DATE.

5. UNTIL DEFINITIVE LEGAL ANALYSIS OF 502 (B) (4) IS COMPLETED, EMBASSY SHOULD ASSUME IT APPLIES TO ALL PROPERTY (BOTH COMMERCIAL AND NON-COMMERCIAL) OF U.S. CITIZENS, WITHOUT REGARD TO VALUE. AS A "RULE OF REASON," WE ARE LIMITING THE EVALUATION TO CASES ARISING IN THE POST-WAR ERA, I.E., SINCE JANUARY 1, 1946, OR THE

DATE OF INDEPENDENCE OF THOSE COUNTRIES RECEIVING INDEPENDENCE, WHICHEVER IS LATER. SINCE ACTIONS (SUCH AS COERCED PARTICIPATION, SEVERE CURTAILMENT OF MANAGEMENT PREROGATIVES, OR FORCED CANCELLATION OR RENEGOTIATION OF CONTRACTS) MAY BE EXPROPRIATORY IN EFFECT WHILE STOPPING SHORT OF OUTRIGHT TAKEOVER, EMBASSY IS REQUESTED TO INFORM DEPARTMENT OF ANY CASES ARISING UNDER ALIEN BUSINESS OR OCCUPATION DECREES TO ENABLE US TO EXERCISE JUDGMENT IN DETERMINING WHETHER "NATIONALIZATION" MAY HAVE OCCURRED WITHIN THE MEANING OF 502 (B) (4) (A) - (C). JUDGMENTS MUST ALSO BE MADE TO DETERMINE, INTER ALIA, WHETHER THE CRITERIA OF 502(B) (4) (D) ARE BEING MET, AND WHETHER "GOOD FAITH" IS PRESENT UNDER 502 (B) (6).

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6. WOULD ALSO APPRECIATE EMBASSY COMMENTS REGARDING WHAT STEPS USG MIGHT APPROPRIATELY TAKE TO BRING THESE PROVISIONS TO THE ATTENTION OF THAI OFFICIALS. KISSINGER

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